



# **Environmental Regulations 101: A Broad Overview**

**Chris Ratcliff**  
**Executive Management Officer/Attorney**  
**Legal Affairs Division**  
**Louisiana Department of Environmental Quality**



# General Principles



What is a regulation?

- Regulation = Rule
- Definition: “Rule’ means each agency statement, guide, or requirement for conduct or action, exclusive of those regulating only the internal management of the agency and those purporting to adopt, increase, or decrease any fees imposed on the affairs, actions, or persons regulated by the agency, which has general applicability and the effect of implementing or interpreting substantive law or policy, or which prescribes the procedure or practice requirements of the agency.



# General Principles



- “Rule” includes, but is not limited to, any provision for fines, prices or penalties, the attainment or loss of preferential status, and the criteria or qualifications for licensure or certification by an agency. A rule may be of general applicability even though it may not apply to the entire state, provided its form is general and it is capable of being applied to every member of an identifiable class. The term includes the amendment or repeal of an existing rule but does not include declaratory rulings or orders or any fees.” La. R.S. 49:951(6)



# Legal Basis for Rules

1. Rules implement the directives set forth by legislature in statutes
2. Regulations = laws
3. DEQ and other executive agencies can adopt regulations only to extent legislative authority is delegated by legislature via statute.



# Legal Basis for Rules, cont.

## 4. Legal authority for DEQ's regulations

### A. State statutes

- i. Louisiana Environmental Quality Act (La. R.S. 30:2001 *et seq*)
  - a) Purposes: “A. The maintenance of a healthful and safe environment in Louisiana requires governmental regulation and control over the areas of water quality, air quality, solid and hazardous waste, scenic rivers and streams, and radiation. B. In order to accomplish these goals most efficiently, it is necessary to provide for comprehensive policies on a statewide basis to unify, coordinate, and implement programs to provide for the most advantageous use of the resources of the state and to preserve, protect, and enhance the quality of the environment in Louisiana.”





## Legal Basis for Rules, cont.

- b) La. Statutes available online: [www.legis.state.la.us](http://www.legis.state.la.us).  
Click "Laws".
- ii. Other state statutes give other state agencies authority to regulate environmental matters.
  - a) Dept. of Natural Resources – extraction of minerals via mining and wells; injection of wastes; surface disposal of other wastes from exploration and production of oil and gas
  - b) Dept. of Health and Hospitals – handling and disposal of medical wastes





## **Legal Basis for Rules, cont.**

- c) Dept. of Wildlife and Fisheries – protection of endangered species
- d) Dept. of Public Safety/State Police – transportation of hazardous materials; reporting of releases; Oil Spill Coordinator
- e) Dept of Agriculture and Forestry – pesticide application and pesticide waste





## Legal Basis for Rules, cont.

- 2013 Legislation affecting DEQ:
  - **Act 108:** Prior law allowed judge who is presiding over an appeal of a DEQ permit action to issue a stay of that action without prior notice or hearing. New law requires notice to all parties and opportunity for a hearing before the court may stay a final DEQ permit action.
  - **Act 323:** Technical changes to the Waste Tire Management Fund procedures:
    - DEQ must make payments to processors by 12<sup>th</sup> of month following month of request.







## Legal Basis for Rules, cont.

- Requests by processors for payment that are unpaid because the Waste Tire Management Fund has insufficient funds shall be paid from any future surpluses in the order in which they were received.





## Legal Basis for Rules, cont.

### B. Federal statutes that correspond to DEQ's authorities:

- a. Clean Air Act
- b. Clean Water Act
- c. Resource Conservation and Recovery Act (RCRA), Subtitle C (hazardous wastes)
- d. Resource Conservation and Recovery Act, Subtitle D (nonhazardous solid wastes)
- e. Atomic Energy Act
- f. Comprehensive Environmental Response, Compensation and Liability Act (CERCLA, a/k/a the Superfund Law)
- g. U.S. EPA implements these statutes with regulations, except for the Atomic Energy Act, which is implemented by the Nuclear Regulatory Commission.



# The Rulemaking Process



1. What prompts DEQ to initiate rulemaking?
  - a. Change in state law
  - b. Change in federal law
  - c. An emergency, declared under R.S. 49:953(B)
  - d. Petition for Rulemaking from outside interested parties (LAC 33:I.Chapter 9)
  - e. Informal request, from either a DEQ employee or someone outside the agency





## 2. Major Steps in the rulemaking process

- a. DEQ submits documents to the Office of the State Register for publication in the Louisiana Register. The Louisiana Register is the official state publication for notifying the public of a state agency's intent to propose new or amended regulations. The Louisiana Register is published on the twentieth of each month.





- b. Publication of certain documents in the Louisiana Register starts the rulemaking time clock:
  - i. Notice of Intent – announcement to the public that DEQ is considering a change to its regulations. The notice includes a brief description of the rule, as well as the date and time of the public hearing, the deadline to submit comments, the address for submitting comments, and the DEQ regulation identifier number (e.g. HW049).



- ii. Fiscal and Economic Impact Statement (FEIS) – an estimate of the cost to the state and to those persons affected if the rule is implemented.
- iii. Proposed Rule – actual text of the proposed language.



- c. DEQ conducts a public hearing on the proposed rule 35-40 days after publication of the Notice of Intent.
- d. After the comment period closes, DEQ prepares a Summary Report.
- e. DEQ submits the Summary Report to the Legislative Oversight Committees assigned to oversee DEQ regulations (House Committee on Natural Resources and Environment and the Senate Committee on Environmental Quality).
- f. The committees have 30 days to consider the proposed rule, and may, or may not, hold a hearing on the rule. If a hearing is held it must be held between 5 and 30 days after receipt of the Summary Report from DEQ. If the proposed regulation is identical to a federal regulation, the committees have only 10 days to consider the proposed rule.



- g. If the regulation is not disapproved by the Legislative Oversight Committees, DEQ submits it to the Office of the State Register for publication in the upcoming issue of the Louisiana Register.
- h. The Office of State Register codifies the rule into the Louisiana Administrative Code.
- i. The rule is also codified by DEQ into its Environmental Regulatory Code, which is updated quarterly.







### 3. Participating in the rulemaking process

- a. Petitioning for rulemaking – any interested person may petition the DEQ in writing to issue, amend, or rescind any regulation.





- b. Public Comments on proposed rules.** There are 3 times when the public can submit comments for consideration:
  - i. Written comments** are accepted by DEQ beginning on the twentieth of the month in which the Notice of Intent appears in the Louisiana Register, and ending 7 days after the public hearing on the proposed regulation. This period lasts 42-47 days but can be shortened (“fast tracked”) if the proposed rule is identical to federal regulations. The DEQ secretary may extend the comment period if she deems it necessary.





- ii. **Written and oral comments** are accepted at the public hearing on the proposed rule.
- iii. **Written comments** may be submitted to the Legislative Oversight Committees (LOCs) after DEQ submits the Summary Report. **Oral testimony** may also be provided to the committees, if a hearing is held.

## **c. How to comment effectively**

- i. Identify who you are, giving your name and address.
- ii. Indicate the specific rulemaking involved and refer to the DEQ identifier number listed on all rulemaking documents.
- iii. Be direct in your comment.
- iv. Explain how the regulation affects you.
- v. Offer alternatives, compromise solutions, and specific language for your suggested changes.
- vi. Type your comments, if possible.

## 4. Public access to DEQ's regulations

### a. Environmental Regulatory Code (ERC).

- i. hard copy (Legal Affairs Division at (225) 219-3985)
- ii. DEQ's website, <http://www.deq.louisiana.gov> under "Rules and Regulations" (in bullet list on left side of page), at "Monthly Regulation Changes" or "Environmental Regulatory Code".

### b. Louisiana Administrative Code (Office of State Register (225) 342-5015)



# Air Quality Program



# Specific DEQ Regulatory Programs



## A. Air Quality Program

1. La. Air Control Law is heavily influenced by the federal Clean Air Act
2. Framework:
  - a. National Ambient Air Quality Standards (NAAQS)
    - i. Primary Standards – protect public health
      - a) With an adequate margin of safety
      - b) Protect *sensitive* populations (e.g., elderly, children, people with respiratory problems)
    - ii. Secondary Standards – protect public welfare (e.g., prevent property damage, harm to wildlife)

# Air Quality Program, cont.



- b. States propose plans to meet NAAQS (State Implementation Plan or SIP)
- c. New Source Performance Standards (NSPS)
- d. National Emission Standards for Hazardous Air Pollutants (NESHAP)
- e. Prevention of Significant Deterioration (PSD) requirements (we don't want clean air to get worse just because it is better than NAAQS)



# Air Quality Program, cont.



- f. Specific requirements for a SIP addressing “non-attainment” areas ( “non-attainment new source review” like PSD)
- g. States Submit Non-Attainment “State Implementation Plan” (SIP) to EPA for review and approval
  - i.) SIP is designed to improve air quality in nonattainment areas until attainment is reached, and to maintain air quality in attainment areas.
  - ii.) The SIP includes regulations as well as other documents.



# Air Quality Program, cont.



- iii.) EPA reviews the SIP. If the SIP complies with statutory and regulatory requirements, EPA approves the SIP.
- iv. ) If state fails to submit SIP or if EPA disapproves the SIP, EPA may impose sanctions on the state (principally loss of federal highway funds), and EPA adopts and promulgates Federal Implementation Plan (FIP).



# Air Quality Program, cont.



- v. Major elements of La.'s SIP regulations:
  - a) **Emission standards** for many pollutants. Examples:
    - i.) Smoke from combustion unit: opacity no greater than 20%
    - ii.) Asbestos from demolition of structures: procedures such as wetting and bagging debris known to contain asbestos
    - iii.) VOCs emitted from a stack:  $n$  pounds/hour

# Air Quality Program, cont.



- b) **Preconstruction Permits:** Operator must obtain permit from DEQ prior to the construction of a “major source” (or a major modification). Permit requires emission control technology that is equal to or better than that defined by EPA regulations. Applicant must establish that source will not cause or contribute to exceedance of NAAQS or increment increase. In areas that are not in attainment with NAAQS , operator must offset proposed new emissions with even greater reductions from other sources.
  
- c) **Operating permits** for major sources and some non-major sources

# Air Quality Program, cont.



- vi. Accident prevention regulations:
  - (1) required by Congress in response to the Bhopal disaster (December 2, 1984)
  - (2) require review of facilities to identify potential release points, and measures to prevent and mitigate releases.





# Solid Waste Program



# Solid Waste Program



## 1. Definition of “Solid Waste”:

- a. “Discarded material...resulting from industrial, commercial, mining, and agricultural operations, and from community activities”
- b. Includes solid, liquid, semi-solid, or contained gaseous material
- c. Includes any garbage, refuse, sludge from a waste treatment plant, water supply treatment plant, or air pollution control facility
- d. Exclusions: hazardous; sewage; nuclear

# Solid Waste Program, cont.



2. Americans generate 4.4 lbs municipal solid waste (garbage) per day per person, on average. Of this, 1.5 lbs is recycled or composted.
3. Landfills: In response to Resource Conservation and Recovery Act subtitle D (1984), EPA adopted rules on:
  - a. Groundwater monitoring
  - b. Siting criteria
  - c. Corrective action





# Solid Waste Program, cont.



4. Landfills: EPA approved La. Solid Waste Regulations to operate in lieu of EPA regs (1993). La.'s regs include requirements for:
  - a. Location of landfills
  - b. Exclusion of hazardous waste and PCBs
  - c. Controls on open burning
  - d. Groundwater monitoring
  - e. Cover designs & materials
  - f. Corrective action
  - g. Financial assurance
  - h. Closure according to approved plan



# Solid Waste Program, cont.

5. Landfill permits contains specific requirements and standards for facility
6. Permits are not required for:
  - a. Land-clearing waste, when disposed on-site
  - b. Recyclables sorted for recycling or reuse
7. Recycling
  - a. Preferred to disposal in landfill
  - b. Recycling Awareness: grants to parish and municipal governments for public education programs
  - c. Each parish required to have plan for reducing waste by 25%
  - d. Tax credit for cost of recycling equipment



## 8. Waste Tires

- a. No waste tires in landfills, unless cut
- b. Transportation and disposal of waste tires are documented by a manifest system.
- c. Fee paid by buyer of new tire; collected by dealer; remitted to DEQ; used to subsidize processors of currently generated used tires, and for cleanup of old tire piles
- d. 77% of waste tires are now being reused



# Water Quality Program



# Water Quality Program



1. The control of the introduction of pollutants into waters of the state and waters of the United States.  
(Does **not** regulate tap water quality; that is regulated by Dept. of Health and Hospitals)
2. State law and federal law overlap
3. Federal law: Clean Water Act originally enacted in 1972 as Federal Water Pollution Control Act
4. State law: Louisiana Water Control Law enacted in 1980 as part of the Environmental Quality Act





# Water Quality Program, cont.



5. **Point-source discharges** are controlled through the National Pollutant Discharge Elimination System (NPDES) and the Louisiana Pollutant Discharge Elimination System (LPDES); a mandatory system using permits that require controls on concentrations of pollutants (effluent limitations).
6. **Non point-source discharges** are primarily controlled through voluntary Best Management Practices and public education.
7. La. Water Control Law prohibits discharges of pollutants to Waters of the State, except as authorized by DEQ



# Water Quality Program, cont.



8. Waters of the State: all surface and underground waters within La.
  - a. Includes intermittent streams
  - b. Includes man-made ditches and ponds (except those that are part of a waste treatment system)
9. LPDES is deemed equivalent to NPDES by EPA; DEQ authorized to operate the LPDES in lieu of NPDES. One permit from DEQ satisfies state and federal law.



# Water Quality Program, cont.



10. Goals of Clean Water Act (1972) included elimination of discharges of pollutants to waters of the U.S. by 1985.
  - a. This has proven to be unfeasible so far.
  - b. States and EPA have focused on controlling the discharges of pollutants at levels that can be assimilated by the receiving stream w/o significant reduction of water quality, as measured against standards set by regulation.



# Water Quality Program, cont.



## 11. Water Quality Standards

### a. Designated uses

- i. All water bodies: primary and secondary contact recreation
- ii. Almost all water bodies: primary contact recreation and fish & wildlife propagation
- iii. Some water bodies: public water supply, oyster propagation, agriculture, outstanding natural resource

### b. Criteria: limits on substance or characteristic in water body. 2 types:

- i. Numeric
- ii. General



# Water Quality Program, cont.



## d. Numeric Criteria – Examples:

- i. pH shall fall w/in range of 6.0 – 9.0, unless natural conditions exceed this range
- ii. Chlorides: maximum concentration set on case-by-case basis. Example: Caney Lake criteria is 250 mg/l
- iii. Dissolved Oxygen shall not fall below 5.0 mg/l in fresh water and coastal marine water bodies; or 4.0 mg/l in estuarine waters.

# Water Quality Program, cont.



## e. General Criteria – Examples:

- i. Color: shall not be increased significantly
- ii. No floating, suspended or settleable solids
- iii. No taste or odor that would interfere w/potable water, or fish/shellfish
- iv. No oil or grease in quantities large enough to interfere w/designated uses
- v. No persistent foaming or frothing materials



# Water Quality Program, cont.



- f. Water quality criteria (apply to a water body) are implemented mainly through conditions in discharge permits (apply to a specific facility), e.g. effluent limitations (e.g., operator may not discharge any wastewater that contains more than # fecal coliform bacteria/liter)
- g. Any unpermitted discharges of pollutants to waters of the state are prohibited, regardless of their effect on water quality.



# Underground Storage Tanks Program



# Underground Storage Tanks Program



1. USTs first addressed in federal law (HSWA) in 1984
2. State regulation began in 1985
3. EPA approved DEQ's program in 1992 to operate in lieu of EPA program
4. Regulations apply to underground storage tank systems containing regulated substances.
  - a. "Underground" means at least 10% of tank system (includes piping) is underground

# Underground Storage Tanks Program, cont.



- b. “regulated substance”
  - i. Substances defined as hazardous under CERCLA
  - ii. Petroleum, including crude & any liquid fraction
  - iii. Except “hazardous waste” (because it’s regulated under the Hazardous Waste Regulations)



# Underground Storage Tanks Program, cont.



5. Exemptions from definition of Underground Storage Tank:
  - a. Noncommercial tanks <110 gallons
  - b. Heating oil for the premises where stored
  - c. Septic tanks
  - d. Certain pipelines regulated under other authority
  - e. Impoundments
  - f. Stormwater/wastewater collection systems
  - g. Flow-through process tanks
  - h. Liquid trap or associated gathering lines directly related to oil & gas production & gathering
  - i. Tanks in underground area (e.g., basement) if tank is on or above surface



# Underground Storage Tanks Program, cont.



6. UST Program elements:
  - a. Registration
  - b. Standards for tank installation & systems
  - c. Leak detection systems
  - d. Record keeping (leak detection system, inventory, etc.)
  - e. Reporting requirements
  - f. Corrective action & remedial response
  - g. Tank closure
  - h. Financial responsibility



# Underground Storage Tanks Program, cont.



7. Motor Fuel UST Trust Fund
  - a. Essentially an insurance program administered by DEQ
  - b. Comprised of fees generated by:
    - i. Annual registration fees paid by tank owners
    - ii. Fee on sales of motor fuel from bulk
  - c. Used for:
    - i. Operation of UST division
    - ii. Investigation, assessment, and site remediation



# Hazardous Waste Program





# Hazardous Waste Program



1. Applies to any solid waste that either:
  - a. Is specifically listed in regulations, or
  - b. Exhibits one of 4 hazardous characteristics:
    - i. Ignitability
    - ii. Corrosivity
    - iii. Reactivity
    - iv. Toxicity

# Hazardous Waste Program, cont.



## 2. Exemptions:

- a. Oilfield wastes (“NOW” or “E&P” waste)
- b. Sewage
- c. Nuclear material
- d. Household wastes



# Hazardous Waste Program, cont.



3. Program requires “cradle to grave” management of hazardous waste:
  - a. Generation
  - b. Transport
  - c. Treatment
  - d. Storage
  - e. Disposal

# Hazardous Waste Program, cont.



## 4. Generator requirements

- a. No permit
- b. Notification to DEQ and/or EPA
- c. Determination of hazardous nature of the waste
- d. Generate manifest for shipment
- e. Properly pack and label
- f. Record-keeping and reporting
- g. Contingency plan
- h. Personnel training plan
- i. Clean up of spills



# Hazardous Waste Program, cont.



5. Transporter requirements
  - a. Notify/obtain EPA ID number
  - b. Manifesting requirements
  - c. Contingency plans
  - d. Personnel training plans
  - e. Financial assurance (liability coverage)





# Hazardous Waste Program, cont.



6. Treatment, Storage, and Disposal Facility requirements
  - a. Permits
    - i. Operating
    - ii. Closure
    - iii. Post-closure
    - iv. Emergency
  - b. Site requirements
  - c. Control of discharges
  - d. Security
  - e. Inspection
  - f. Preparedness and prevention
  - g. Contingency plan
  - h. Waste analysis



# Radiation Protection Program



1. Federal government regulates high level nuclear waste, such as spent nuclear fuel rods
2. La. Law: EQA Chapter 6 La. Nuclear Energy and Radiation Control Law
  - a. Regulates most aspects of radioactive materials & ionizing radiation not preempted by federal government
  - b. Extends to workplace (unlike most other DEQ regulations)
3. Two primary “sources of radiation”
  - a. Radioactive materials
  - b. Devices or equipment that produce radiation

# Radiation Protection Program, cont.



4. Radioactive materials regulated by La. Include low-level radioactive waste, such as Naturally Occurring Radioactive Material (NORM) that is brought up from underground with oil and collects inside pipes
5. Devices or equipment include x-rays
  - a. Doctors, dentist, etc.
  - b. Industrial radiographers (non-destructive testing)
6. Radiation Machines and facilities must be registered
7. Person must have a license to use, own, store, possess, etc. source of radiation
8. Regulations also include standards for protection against radiation



# Remediation of Contaminated Sites Program



# Remediation of Contaminated Sites Program



1. Special set of rules and procedures for assessing and remediating soil and groundwater that is contaminated with hazardous substances





# Remediation of Contaminated Sites Program, cont.



## 2. “Hazardous substance” definition:

“any gaseous, liquid, or solid material which because of its quantity, concentration, or physical, chemical, or biological composition when released into the environment poses a substantial present or potential hazard to human health, the environment, or property, and which material is identified or designated as being hazardous by rules and regulations adopted and promulgated by the secretaries of the Department of Environmental Quality or of the Department of Public Safety and Corrections, regardless of whether it is intended for use, reuse, or is to be discarded. ... The term does not include petroleum, including crude oil or any fraction thereof which is not otherwise specifically listed or designated as a hazardous substance under this Subsection, and the term does not include natural gas, natural gas liquids, liquefied natural gas, or synthetic gas usable for fuel (or mixtures of natural gas and such synthetic gas).” La. R.S. 30:2272



# Remediation of Contaminated Sites Program, cont.



3. Examples of contaminated sites:
  - a. Old waste dumps (various substances)
  - b. Gas stations (gasoline and diesel)
  - c. Dry cleaners (Perchloroethylene)
  - d. Wood preservers (creosote)
  - e. Used oil reclaimers (motor oil)
  - f. Chemical manufacturers (chemical products)
  - g. Oil refineries (various)
  - h. Battery recyclers (lead)



# Remediation of Contaminated Sites Program, cont.

4. Who pays for the cleanup?
  - a. CERCLA and the EQA, Ch. 12 were originally written to address the old dump sites, which received wastes from a large number of generators and transporters
  - b. All of the following are liable:
    - i. Owner, operator, lessee
    - ii. Generators of waste
    - iii. Transporters of waste
    - iv. Arrangers of transportation
    - v. Disposers of waste





# Remediation of Contaminated Sites Program, cont.



5. Liability is without regard to:
  - a. Negligence
  - b. Knowledge of improper disposal
  - c. Legality of disposal at the time
  - d. Rationale:
    - i. Generators of hazardous substances were in position to know the hazards of those substances and of the improper disposal of them
    - ii. State cannot and should not bear costs associated with private profit making ventures
  - e. Each responsible party is presumed liable for all costs
  - f. Responsible party bears burden of proving reasonable basis for apportionment



# Remediation of Contaminated Sites Program, cont.



6. Most old, unauthorized dumps have been cleaned up
7. Modern landfills have few problems due to more stringent standards
8. At most sites, liability falls on owners and operators, rather than generators and transporters



# Remediation of Contaminated Sites Program, cont.



9. RECAP: How clean is “clean?”
  1. Cleanup standards for each constituent of concern present in soil or groundwater at a site are determined through DEQ’s Risk Evaluation/Corrective Action Program
  2. Responsible party can either:
    - a. Use predetermined screening standards, based on the most conservative assumptions about exposure pathways. Will be lowest (i.e. most protective) levels
    - b. Develop site-specific standards. The more site-specific data that are provided for evaluation of actual risk, the more likely a higher concentration will be deemed acceptable



# Notification Regulations and Procedures for Unauthorized Discharges



1. Regulations aimed at getting the right information to the right people at the right time.
2. **“Emergency Condition”** – any condition which could reasonably be expected to endanger the health and safety of the public, cause significant adverse impact to the land, water or air environment, or cause severe damage to property.”
  - a. Discharger must call the State Police 24-hour Hotline immediately. State Police notify DEQ and local emergency response, if necessary.



# Notification Regulations and Procedures for Unauthorized Discharges



- b. Discharger must also submit written report to DEQ within 7 days
- 2. **Non-emergency conditions** – If the quantity of pollutant discharged exceeds the quantity specified in the regulations for that substance:
  - a. Discharger must promptly notify DEQ within 24 hours after learning of the discharge, via website, email, or telephone
  - b. Discharger must also submit written report to DEQ within 7 days
  - c. Act 81 of 2008, effective 6/5/08: Upon development of the one-call state notification system by State Police, proper notification to that system shall satisfy all DEQ requirements.



# DEQ in 2013

Office & Division Contact Information



Office of the Secretary

Legal Affairs Division

P.O. Box 4302

Baton Rouge, LA 70821-4302

225-219-3985



# DEQ in 2013

## Speaker Contact Information



Christopher A. Ratcliff

Attorney & Ombudsman

[chris.ratcliff@la.gov](mailto:chris.ratcliff@la.gov)

225-219-3258



# Resources



- DEQ Regulations: [www.deq.louisiana.gov](http://www.deq.louisiana.gov); under “Quick Links,” click “Rules and Regulations.”
- La. Environmental Quality Act: [www.deq.louisiana.gov](http://www.deq.louisiana.gov); under “Quick Links,” click “Rules and Regulations.”
- All La. statutes available online: [www.legis.state.la.us](http://www.legis.state.la.us). Click “Laws”

